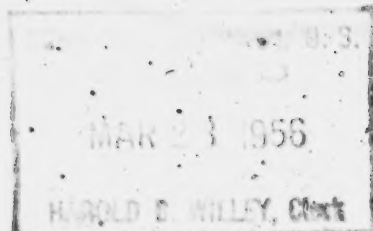


LIBRARY
SUPREME COURT, U.S.



In the Supreme Court
OF THE
United States

OCTOBER TERM, 1956

No. 718 39

UNITED STATES OF AMERICA,

Petitioner,

vs.

PAUL E. PLESHA, JAMES E. MABBUTT
and MYRON L. KERN,

Respondents.

**MEMORANDUM OF NON-OPPOSITION
TO GRANTING OF WRIT OF CERTIORARI.**

PHILIP C. WILKINS,

818 19th Street, Sacramento, California,

Attorney for Respondents.

LAWRENCE A. SCHEL,

1008 Eighth Street, Sacramento 14, California,

Of Counsel.

In the Supreme Court

OF THE
United States

OCTOBER TERM, 1955

No. 718

UNITED STATES OF AMERICA,
Petitioner,

vs.

PAUL E. PLESHA, JAMES E. MABBUTT
and MYRON L. KERN,

Respondents.

MEMORANDUM OF NON-OPPOSITION TO GRANTING OF WRIT OF CERTIORARI.

Respondents do not oppose the granting of the Petition for a Writ of Certiorari filed herein by the Solicitor General of the United States.

If the Writ be granted, respondents will file a brief on the merits in which they will dispute and answer the points made by the Solicitor General's petition concerning the merits of this controversy, and in which they will endeavor to demonstrate that the de-

cision of the Court of Appeals for the Ninth Circuit in this case was correct, and that of the Court of Appeals for the Tenth Circuit in *United States v. Hendler*, 225 F. 2d 106, is not correct.

So that silence concerning the issues here involved shall not have the effect of limiting the issues to those indicated in the Solicitor General's petition, it is desired to state that as we see them the issues are as follows:

1. Does the Court have jurisdiction?
2. As stated by the trial Court: "The central question in this litigation is whether the Relief Act of 1940, as originally enacted, imposed on service men who put their private life insurance policies under the protection of that Act, a liability to repay the defendant for whatever the latter might have to disburse to the insurance companies under that statute."

(123 F. Supp. at 596.)

3. If such a liability was imposed, what was the measure of that liability: To reimburse the United States for the amount it would have paid on account of the protection of the particular policy if the United States had settled with the insurance company in accordance with the terms of the 1940 Act; or to repay the greater amount which the Government actually paid the company in accordance with the terms of the 1942 amendments?

4. Did the 1942 amendments to said Act extend the period of protection of policies placed under protection before the enactment of such amendments?

5. Assuming that the 1940 Act imposed on each appellant the obligation to reimburse the Government for the amount which it might pay on account of the protection of his policy in accordance with the terms of that Act, could the 1942 Congress, without violating the Fifth Amendment to the Constitution of the United States, increase the burden of that obligation without his consent by increasing the amount which the Government would pay to the insurance company and requiring him to reimburse the Government for such larger payment?

6. Was the United States entitled to collect, by way of offset against appellants' National Service Life Insurance dividends, the amounts it did deduct from such dividends?

The above statement of issues is taken verbatim from our opening brief before the Court of Appeals.

It appears from the Solicitor General's petition that he is now abandoning the claim that the trial Court did not have jurisdiction.

Dated, Sacramento, California,

March 21, 1956.

Respectfully submitted,

PHILIP C. WILKINS,

Attorney for Respondents.

LAWRENCE A. SCHEI,

Of Counsel.